

Application No. 09/706,370

AIDT 1000-1

REMARKS

In the Official Action mailed 4 October 2005, the Examiner objected to the RESPONSE AND AMENDMENT filed 20 April 2005, as not fully responsive.

The Examiner has taken the position in reliance on 37 C.F.R. §1.111, that the subject RESPONSE AND AMENDMENT was not fully responsive "because it does not include arguments pointing out specific distinctions believed to render the added new claim(s) 56 and 57 are patentable over the references previously applied against the elected claims ..." Office Action, page 2. Although we believe that the Examiner's reliance on 37 C.F.R. §1.111 is an error in this context, Applicant has canceled claims 56 and 57 to advance prosecution.

37 C.F.R. §1.111(b) requires substantive responses to "every ground of rejection in the prior Office action," where the term "prior Office action" is a reference to the Office Action to which the response is made. The subject RESPONSE AND AMENDMENT was filed in response to the requirement for restriction mailed 6 April 2005. Since a requirement for restriction is not an action on the merits and is not "rejection" in the sense of 37 C.F.R. §1.111(b), the Examiner's reliance on the rule is a mistake.

In addition, Applicant points out that there have been no references applied against the elected claims 44-55 in any previous rejection. Such claims were rejected only under 35 U.S.C. §101, in the Office Action mailed 6 October 2004, in response to which Applicant has amended the claims as set out in the RESPONSE/AMENDMENT filed 5 January 2005.

Accordingly, the Applicant respectfully requests reconsideration of the rejection, in view of the comments set forth above.

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CONCLUSION

It is respectfully submitted that this application is now in condition for allowance, and such action is requested.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (AIDT 1000-1).

Respectfully submitted,

Dated: 3 Nov 05



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